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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. 294

EUGENE A. TALIAFERRO,
Petitioner,

vs.

HON. THOMAS COAKLEY, Judge Pro Tem of the Superior Court for the County of Contra Costa, State of California, and DOROTHY TALIAFERRO aka FINN aka DAVIS, real party in interest,
Respondents.

BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI.

THE MERITS OF THIS ACTION WERE CONSIDERED BY THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA.

The petitioner seeks to present to the Honorable Supreme Court of the United States essentially two

issues. The issues are somewhat confused in the petition and have been somewhat confused in the proceedings leading up to this stage of the proceeding. Basically and essentially, they are as follows:

1. That Thomas Coakley, Superior Judge of Mariposa County, assigned by the Judicial Council of the State of California to Contra Costa County for the purpose of trying an action titled "Taliaferro v. Taliaferro", was, in fact, biased and prejudiced against the petitioner, Eugene A. Taliaferro.

2. The other issue is whether the procedures set up by the Legislature of the State of California for considering Issue No. 1 were properly followed.

We respectfully submit that Issue No. 1, outlined above, is not here involved. Issue No. 2 has been decided adversely to petitioner by the State Court and does not present a Federal question.

THE QUESTION OF ACTUAL BIAS WAS PRESENTED TO THE STATE COURT.

The petitioner for certiorari here contends that no counter-affidavit was filed and that, therefore, his affidavit is uncontradicted and must be treated as true. This office does not have access to a certified copy of the record presented to your Honorable Court and, therefore, cannot cite by reference to page in the record. But we respectfully call the attention of the

Court to "Return by Way of Answer to Petition for Writ of Prohibition", filed with the District Court of Appeal, which was verified by the Honorable Thomas Coakley, Superior Judge. Whether or not the procedure for the consideration of these issues was correctly pursued according to the California Statutes, is a matter of State Law. So far as any Federal question is concerned, it is enough if the issue was actually decided by an independent tribunal. Errors of state procedure do not raise a Federal question. The issue of actual prejudice has been decided adversely to the petitioner, even though under the state procedure he was not entitled to present it in that form.

THE PETITIONER HAS NOT PROPERLY PRESERVED A FEDERAL QUESTION.

28 U. S. Code, Annotated, Section 1257, Subdivision 3, provides for Writ of Certiorari "where any title, right, privilege or immunity is *specially* set up for claim under the Constitution . . ." The record does not disclose that the petitioner specially set up a claim of Federal privilege at the trial Court. The petitioner acknowledges in his petition (page 13, beginning at line 11) that the first time he raised a Federal question was on petition for rehearing before the District Court of Appeal. We submit that this case is governed by *Edelman v. California* (1952), 344 U.S. 357, 73 Sup. Ct. Rpt. 293, 97 L.Ed. 387.

CONCLUSION.

This case was decided by the California Courts on the basis of the petitioner's failure to comply with California procedure. This does not raise a Federal question. A Federal issue was first sought to be raised upon a Petition for Rehearing before the District Court of Appeal of the State of California. The Federal issue he seeks to have presented not having been raised in the trial Court, it, therefore, does not come within 28 U.S.C.A. 1257(3), being a "title, right, privilege or immunity specially set up for claim under the Constitution". The allegations of bias and prejudice against the assigned judge were traversed by a certified Return to Petition for Writ of Prohibition in the District Court of Appeal and, presumably, passed upon by the Court.

No good ground exists for certiorari in the United States Supreme Court. The petitioner appears to be seeking to pick or choose a trial judge to his own liking by filing an Affidavit of Prejudice against any judge assigned to try one of his cases who happens to disagree with him. It is expensive to the County of Contra Costa to send away considerable distances for judges to try the petitioner's cases because he seeks to abuse the privileges of the *Code of Civil Procedure,* Section 170, of the State of California. Petitioner has insisted upon disqualifying all of the trial judges in Contra Costa County and if he continues to disqualify judges, there will soon be no Superior Judge in the State who is to his liking. It is important that the Superior Court in Contra Costa County

be able to clear its docket by having cases tried. If a litigant who files law suits (in pro per) by the score can summarily disqualify any judge who happens to rule against him, it will be impossible to keep the processes of the orderly administration of justice functioning.

Dated, Martinez, California,
October 5, 1956.

Respectfully submitted,

FRANCIS W. COLLINS,
District Attorney of the County of Contra Costa,
By MATTHEW S. WALKER,
Deputy District Attorney of the County of Contra Costa,
Attorneys for Respondent.

JOHN T. FEY, Clerk

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vs.

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Respondents.

PETITIONER'S ANSWER TO RESPONDENT'S BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S ANSWER TO RESPONDENT'S BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI

I

RESPONDENT'S BRIEF IN REPLY TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI SETS FORTH NO VALID REASONS FOR A DENIAL OF THE WRIT.

Respondent's Reply to the Petition for a Writ of Certiorari filed herein is a composite of misstatements of the issues, the law and the facts pertaining to this matter. To begin with Respondent sets forth what he calls the two issues involved in this case. It is obvious from the language of the so called issues as drafted by Respondent that no Federal or Constitutional questions could be involved in those issues. It is equally obvious that they are not the issues raised by this Petition for a Writ of Certiorari filed in this proceeding. There is only one issue raised by that Petition. That issues is "Can the Courts of any given State by ignoring their own statubory procedure and decided cases compel a litigant to proceed to trial before a biased and prejudiced Judge without violating that litigant's rights under the Fourteenth Amendment to the Federal Constitution?" It will be seen from an examination of the statutes and the authorities cited in Petitioner's Petition for the Writ that he carefully and properly followed the California Law. When the Respondent Judge struck Petitioner's affidavit of bias and prejudice from the records of the trial court prior to proceeding with the trial of the case, his action raised out one issue, "Did the affidavit of bias and prejudice filed by Petitioner state sufficient facts to establish as a matter of law the bias and prejudice of the trial Judge?" Petitioner claims that it did. That position of Petitioner is abundantly supported by the authorities cited in his

petition for Writ of Certiorari. The proper remedy to test this question under the California Law was by application for a Writ of Prohibition to the District Court of Appeals to prevent the biased trial Judge from proceeding with the trial. Under the facts of this case, the Appellate tribunal was confined to a determination of the question as to whether or not the facts set forth in Petitioner's affidavit of bias and prejudice did show disqualification of the trial Judge as a matter of law. Under an unbroken line of California Authorities the Appellate Court in this matter had no right to consider the question of bias and prejudice as a controverted factual question. Yet respondent says they did. If they did so they acted in violation of the laws of their own state. If they decided the question of bias and prejudice adversely to Petitioner on the strength of Judge Coakley's answer to the Writ of Prohibition they did so illegally. Sec. 170(5) of the Code of Civil Procedure prescribes a most adequate and under the California Law the exclusive method for the trial Judge to raise all factual questions bearing upon the issue as to his bias and prejudice and gives a comprehensive means for trying and determining that issue. If the trial Judge ignores that method given him by Sec. 170(5) C. C. P. and fails to file a counter affidavit denying any charges of bias or setting up other factual issues, he cannot thereafter in opposition to an application for a Writ of Prohibition to the District Court of Appeals rest his case upon a dispute as to the facts involved. The question thereafter becomes one purely of law. The affidavit of bias and prejudice filed before him which he has ignored must be deemed true for all purposes in connection with the application for a Writ of Prohibition filed before the Appellate Court. If then the Appellate Court did, as Respondent says they did, determine the factual issues of "actual prejudice" against

Petitioner they acted wrongfully under the California Law. The cases cited by Petitioner in his Petition in this proceeding clearly establish that. If the Appellate Court upon a reading of Petitioner's affidavit of bias and prejudice filed in the trial court decided that as a matter of law it was insufficient to disqualify the trial Judge it was equally wrong. The substance of the affidavit filed by Petitioner herein before the Respondent Judge was clearly sufficient under the California Law to disqualify him. The cases cited in Petitioner's Petition for the Writ herein fully established that point. The District Court of Appeals of the State of California then has by a denial of Petitioner's application for a Writ of Prohibition wrongfully denied him relief to which he was entitled under the California Law. Up to this point Petitioner had no cause to complain of a violation of his Constitutional rights under the Federal Constitution. Not until the California Appellate Court denied Petitioner's Petition for a Writ of Prohibition did the California Courts say in effect to Petitioner that he was to be compelled to try his case before a trial Judge who had not denied his adverse opinion of Petitioner's truthfulness and integrity but in fact had admitted it in his answer filed in opposition to Petitioner's application for a Writ of Prohibition in the Appellate Court. It was not until then that Petitioner knew that the California State Courts were by their action proceeding to compel Petitioner to have his case tried by a biased and prejudiced Judge. It was not until then that the California Courts acted in violation of Petitioner's rights under the Fourteenth Amendment to the Federal Constitution. Consequently Petitioner seasonably raised the Federal question pertaining to his rights under the Fourteenth Amendment to the United States Constitution in the State Courts when he set forth

his claim of right in a Petition for a rehearing before the District Court of Appeals of the State of California and pursued his claim from there on to the California State Supreme Court where he was met by an adverse ruling.

> Muhlker vs. Harlem Railroad Co. 197 U.S. 544; 25 Sup. Ct. 422; 49 L'Ed, 872.

A Federal question may arise for the first time in a proceeding where the State Courts by the wrongful administration of the written law of the State violate a litigant's rights under the Fourteenth Amendment to the Constitution. See Myles Salt Co. vs. Iberia Drainage Dist. 239 U.S. 478; 36 Sup. Ct. 204; 60 L'Ed. 392. There it was said at page 484 U. S. :

> "And such decision, it is further contended, was a decision upon the state law and presents no Federal question, the statute of the State not being attacked.
>
> We cannot concur in the contention. It is true the law of the State as written is not attacked, but the law as administered and justified by the Supreme Court of the State is attacked and it is asserted to be a violation of the Constitution of the United States. The question presented is Federal and the motion to dismiss is denied. And the considerations that move a denial of the motion move a decision of the merits of the question."

In Sullivan vs. Texas 207 U. S. 416; it was held that a constitutional question presented for the first time in a Petition for a Rehearing before the Court of Civil Appeals which was denied was timely, where the State Supreme Court later upheld the action of the Appellate Court. There the United States Supreme Court said at page 422 U. S.:

> "By the action of the Supreme Court of The State the judgment of the Court of Civil Appeals became the judgment of the highest court in the State to which the case could be taken. and hence the writ of error properly ran to that court. The constitutional question, although not raised theretofore, was distinctly presented in the petition to the Court of Civil Appeals for a rehearing, was considered by that court and decided adversely to the plaintiff in error. This court therefore has jurisdiction."

Counsel for Respondent contend that this case is governed by Edelman v. California (1952) 344 U. S. 357, 73 Sup. Ct. Rpt. 293,

97 L'ED 387. There is no similarity between the Edelman case and this case. In the first place Edelman was prosecuted in the Municipal Court for the violation of a California Statute which he claimed was unconstitutional under the Federal Constitution. The presence of the Federal question was therefore quite apparent at the time of the trial when Edelman was being prosecuted under what he claimed was an unconstitutional State Statute violative of the United States Constitution. There was no excuse for him not to have raised the Federal question at the time of his trial in the Municipal Court of Los Angeles. That, however, was not Edelman's chief difficulty according to the opinion of the United States Supreme Court cited supra. The court in its opinion pointed out and stressed the fact at page 359 of its opinion that Edelman's Attorney had allowed himself to become in default under the California law. The Supreme Court decision in the Edelman case called attention to the fact that under the authority of People v. Garza 86 Cal. App. 97; 260 P. 390, Rule 8, Rules on Appeal from Municipal Courts and Inferior Courts in Criminal Cases, as amended to January 6, 1947; Deering's Cal. Penal Code 1949 Sec. 1253 and People v. Sukovitzen 67 Cal. App. 2nd 901, 155 P. 2nd 406 the California Appellate Department of the Superior Court had the power and authority to affirm a judgment of conviction without a consideration of the merits where the Appellant failed to appear. The U.S. Supreme Court then decided that the Appeal of Edelman in the California State Court had been properly decided under the California Law upon the basis of his default. That being so no California Court had decided the constitutionality of the vagrancy statute under which he was prosecuted inasmuch as that question was presented for the first time on Appeal and had not been raised in the trial court. All that was decided by the

California courts, as pointed out in the U.S. Supreme Court decision, was that Edelman was in default under the California law and his Appeal therefore raising the sonstitutionality of the vagrancy statute in question need not be decided on its merits. The State Court had therefore not decided a Federal question. It has only decided that an Appellant was in default under the California law. The U. S. Supreme Court decision in the Edelman case also pointed out that he did not further urge any deprivation of a Federal Constitutional right in connection with his motion for relief from the default in the State Courts. The U. S. Supreme Court then went on to show that Edelman could still protect his constitutional rights by an application for a Writ of Habeas Corpus under the California law. None of those elements are present in the case at bar. The vast dissimilarity between the Edelman case and the case under consideration here is readily apparent. The Edelman case is in no wise controlling in this matter.

In his conclusion the emminent District Attorney from Contra Costa County brazenly goes beyond the record to first invade the realm of clair-voyancy and then descend to the regions of inaccuracy and untruth. In the first line of his conclusion he states "This case was decided by the California Courts on the basis of the petitioner's failure to comply with California Procedure." Such a conclusion would indeed require the exercise of occult powers for the California District Court of Appeals denied Petitioner's Petition for a Writ of Prohibition without opinion or comment. The California Supreme Court did likewise when Petitioner Petitioned for a Transfer and Hearing of the Cause. The District Attorney then charges Petitioner with seeking the hand pick his own Judges by filing Affidavits of Prejudice against any Judge who disagrees

with him. There are five Superior Court Judges in Contra Costa County. Three of these hear matters involving Petitioner whenever they come before them. There have been six out of county Judge's called in to hear Petitioner's matters within the last four years. Petitioner has filed an affidavit of bias and prejudice against only one of these, the present Respondent Judge. The statement that Petitioner files suits in pro per by the score is a reckless and vicious exaggeration. Opposing Counsel's expressed fear that Petitioner might summarily disqualify any trial judge who happens to rule against him is more worthy of a place in an old wives tale than in the pages of a brief before this Court. It certainly shows an utter lack of familiarity with the provisions of Sec. 170 (5) of the California Code of Civil Procedure. That section itself provides complete safeguards against any threat of disqualification of any Judge without good and sufficient grounds together with a full hearing to determine whether or not such grounds exist. Opposing Counsel knows full well that any challenged Judge need but file within five days time an affidavit under C.C.P. 170 (5) denying his bias and prejudice and he can thereafter receive complete exoneration, in a hearing presided over by another Judge selected by the Judicial Counsel, if the charges be unfounded. After exoneration he may proceed to try the case unblemished by any taint of bias and prejudice. There is under the California law a most adequate procedure to protect against the pretended and fabricated fears of opposing Counsel. Perhaps, however, Petitioner should not be too surprised at the learned District Attorney's invasion of the realm of fantasy. Such procedure is not at all a stranger to his usual methods. A few years ago this same District Attorney appearing before the Kefauver Committee which was then investigating suspected liasons between local enforcement officers and organized vice and crime

found himself compelled to explain the reason for nocturnal telephone calls to his home made by one "Big Bill" Pechart at that time a notorious California gambling overlord. The learned District Attorney explained those mysterious telephone calls coming between 12 midnight and 3 in the morning by pointing out that he and said "Big Bill" had for a number of years enjoyed a soul satisfying friendship of the purest spiritual nature entirely unrelated to mundane affairs and certainly entirely unconnected in any way with so low an occupation as gambling which was of course "Big Bill's" business. The impression sought to be conveyed to the Kefauver Committee was that "Big Bill" the notorious gambler called his dear friend the District Attorney at all hours of the night in order to solicitously inquire if he was sleeping well and enjoying good health these calls being motivated by the purest and most unselfish feelings of friendship and nothing else. The purveyor of such a tale could not very well be expected to stick to a record with its cold naked truth. The learned District Attorney next drags in the usual dollars and cents argument. He deplores the expense of bringing in Judges from outside Counties. His argument suggests the picture of a slow moving team of oxen wearily descending the slopes of the Sierras. As the matter of fact the last out of County Judge that was brought in to try one of Petitioner's cases was driven from Oakland by his Bailiff after he had finished his morning calendar. Petitioner's case a quiet title matter began at 2 p.m. and finished by 3:30 p.m. in time for the visiting Judge to returnto his chambers if he so desired. The entire distance travelled roundtrip was approximately 70 miles. If an allowance of 10¢ per mile travelling expense was granted plus $3.00 for lunch the entire expense involved would be $10.00. Would the learned District Attorney suggest that this sum was sufficiently

staggering to justify calling a halt to the processes of the administration of impartial justice. Furthermore the extra expense of calling an outside Judge is usually minimized by the counties involved by having one of the local Judges of Contra Costa County exchange places with the outside Judge for the time being. Whatever the facts may be the dollars and cents argument is indeed an unworthy one. The most precious possession that any American has is his right to the fair and impartial administration of justice by the courts of our land. It is there that he experiences at first hand the guarantees of our Federal Constitution. An argument in favor of the deprivation of such rights on a dollars and cents basis must indeed be repulsive to those who have spent a lifetime following protecting, and championing these fundamental rights guaranteed by an orderly government and enjoyed by a free people. The argument of the District Attorney of Contra Costa County in this respect is both inaccurate and unworthy. It is arguments such as these that invite the sceptical and unitiated to point to the law as a plaything of the rich. Petitioner would have preferred to have confined his remarks to the record as it appears before this court and the authorities which are pertinent to the facts of this case. When, however, an experienced practitioner learned in the law resorts to a patent and brazen attempt to disparage and discredit an ordinary citizen by a reckless departure from the confines of the record and even then does so untruthfully it would seem justifiable if the attacked citizen goes outside the record to inform the court as to the real truth involved. It is respectfully submitted that this case is not controlled by the principles of the Edelman case or any similar case and the Writ of Certiorari ought to be granted to inquir into Petitioner's Constitutional rights involved in this proceeding.

Eugene A Tabferro